

No. 9(1)82-8 Lab./1977.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Managing Director, Central Co-operative Bank Ltd., Ambala City (ii) Assistant Registrar, Co-operative Society, Model Town, Yamuna Nagar.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 498 of 1980

between

SHRI MAM CHAND, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S (i) MANAGING DIRECTOR, THE AMBALA CENTRAL CO-OPERATIVE BANK LIMITED, AMBALA CITY, (ii) ASSISTANT REGISTRAR, CO-OPERATIVE SOCIETY, MODEL TOWN, YAMUNA NAGAR.

Shri Surinder Kumar for the workman.

Shri S.C. Chawla for the respondent-management.

AWARD

This reference No. 498 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana vide his order No. ID/Amb/22/80/54328, dated 21st October, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mam Chand, workman and the respondent management of M/s (i) Managing Director, The Ambala Central Co-operative Bank Limited, Ambala City, (ii) Assistant Registrar, Co-operative Society, Model Town, Yamuna Nagar. The terms of the reference was :—

Whether the termination of services of Shri Mam Chand was justified and in order ? If not, to what relief is he entitled ?

On receiving this order of reference the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to the demand notice is that he was appointed on 16th September, 1976 as employee with the respondent and was terminated on 19th August, 1977 without giving any notice, chargesheet or holding any enquiry. The order of termination is illegal without jurisdiction and the workman is entitled for his reinstatement with full back wages and continuity of service.

The case of the respondent according to his written statement is that the workman was appointed on probation. His services could be terminated without assigning any reason. The claimant, had resigned from the post voluntarily on his own accord and the same was accepted by the Bank in accordance with the Common Cadre Rules. The resignation was submitted on 28th March, 1977 due to his personal reasons, which he has stated in his application dated 19th March, 1979 made to the Hon'ble Chief Minister of the Haryana. The resignation was accepted immediately. The reference is false and frivolous, so it may be dismissed.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether it is a case of voluntarily abandonment of service as he resigned of his own accord ? If so, to what effect ?
- (2) Whether the termination of services of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
- (3) Relief.

My findings on issues is as under :—

*Issue No. 1.*—Issue No. 1 is whether it is a case of voluntarily abandonment of service as he resigned of his own accord. The respondent's representative argued that as the claimant resigned on his own on 28th March, 1977 and he knows the fate of his claim so he did make any demand notice upto 30th October, 1979. The claimant gave this demand notice on 30th October, 1979 after a lapse of 2½ years on the ill advise of some persons. The workman has admitted the fact of resignation in his statement as WW-1 where he has stated that he gave the resignation. But it was not given by him of his own will. He has also accepted the resignation in his cross examination that he gave the resignation. Further the applicant gave one application to the Chief Minister Haryana on 5th February, 1979 in which he has admitted that he gave the resignation due to his family circumstances and he wants to withdraw the same which clearly shows that the claimant gave the resignation of his own without giving further proof. He further argued that the self-admission and confession does not require further proof to establish the fact. It clearly shows that the claimant resigned of his own accord so he can not claim of his reinstatement. The representative

of the workman argued on this point that the workman was employed as Mini Bank Manager in the year 1976 and worked with the respondent very smoothly. As stated by the claimant in his cross examination that he has some dispute about the recovery and the Deputy Registrar of the circle called him and asked him to resign so the resignation was taken under the force and not voluntarily. He further argued that the respondent has failed to produce the original resignation in the Court to prove this fact that the workman has resigned of his own accord. So, it is not proved from the respondent side that the workman resigned of his own as alleged by the respondent.

After hearing the arguments of the parties and going through the file, I am of the view that though the respondent has not produced the original resignation in the Court but when the workman has admitted in his statement and similarly in the cross-examination that he resigned, does not make any difference. The resignation given by the workman is a established fact. It cannot be denied after the confession of the workman in his statement. The witness of the respondent has stated in his statement as MW-1 that the resignation was accepted by the manager of the Bank and the workman give the application to the Chief Minister for favourable consideration which was produced by the respondent in the court which was not denied by the workman in any way, clearly shows that he accepted the resignation which was given by him voluntarily. So the issue is decided in favour of the respondent and against the workman.

*Issue No. 2.*—After deciding the issue No. 1 in favour of the respondent Issue No. 2 need no discussion because when he resigned the service of his own accord then it is not termination. When it is not termination then there is no need to discuss whether the order of termination was proper and justified. In these circumstances the workman is not entitled for any relief. This issue is also decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 4th February, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

Endstt. No. 455, dated the 19th February, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments. Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana, Faridabad.

No. 9(1)82-8Lab/1978.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of The M/S Ambala Central Co-operative Consumers Stores, Ltd., Ambala City:—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT,  
HARYANA, FARIDABAD

Reference No. 428 of 1980

between

SHRI M.M. LAL GUPTA, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S THE  
AMBALA CENTRAL CO-OPERATIVE CONSUMERS STORES LIMITED, AMBALA CITY

Shri Madhu Sudan Saran for the workman.

Shri S.C. Chawla for the respondent-management.

#### AWARD

This reference No. 428 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/46968, dated 5th September, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri M.M. Lal Gupta, workman and the respondent management of The M/S Ambala Central Cooperative Consumers Stores Limited, Ambala City. The term of the reference was :—

Whether the termination of services of Shri M.M. Lal Gupta was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to his demand notice and claim statement is that he joined the service of the respondent in Medical Section in the year 1969. The workman worked properly upto the year 1976. On 25th October, 1976, the workman was suspended because he was arrested in a criminal case for embezzlement and terminated on 28th April, 1979 with retrospective effect from 25th October, 1975, the date of suspension. The order of termination was with a plea that the workman has attained the age of 70 years while retirement age is 60 years. The applicant was taken in service by the respondent concerned when the applicant has retired from the previous master. The termination orders issued by the General Manager were beyond the jurisdiction and illegal. The management had not paid the service compensation as required under section 25-F of the Industrial Disputes Act. The orders of termination are illegal so the claimant is entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the Managing Director of Confed, the principal employer has not been made the party. So it is not maintainable. The applicant did not fall within the ambit of section 2(s) of the Industrial Disputes Act, 1947, so it is not maintainable. The claimant is a Government pensioner and was appointed in the store on stop gap basis. His age at present is 70 years whereas the retirement age is 58 years, so the reference is not maintainable. During the claimant's tenure he embezzled worth Rs. 70,000 in the store so it is not maintainable. A retired person cannot seek employment in the Public Sector and the services of the retired person can be removed at any time without notice and the claimant drew two D.A. from the store and had cheated the store by his action. The services were terminated due to criminal breach of trust as embezzlement caused by him in the store. So the reference is bad in law and be dismissed.

On the pleadings of the parties, the following issues were framed:—

1. Whether the reference is bad for mis-joinder and non-joinder of necessary parties? If so, to what effect? (OPM)
2. Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?
3. Relief?

My findings on issues are as under:—

#### Issue No. 1.—

Issue No. 1 is whether the reference is bad in law for non joinder and mis-joinder of the necessary parties? On this issue the respondent produced no documentary or oral evidence and not objected during the arguments. So the issue is decided in favour of the workman and against the respondent.

#### Issue No. 2.—

Issue No. 2 is as per reference. On this issue the representative of the respondent argued that the claimant was employed in the year 1969 in a stop gap arrangement in the Medical Section of the store and during this Course of employment the claimant misappropriate the funds of the Co-operative Super Bazar amounting to Rs. 70,644 and the claimant was involved along with other associates and was arrested by the police being incharge of the store of the Super Bazar Hall and caused criminal breach of trust with the Super Bazar. It was his duty to have the vigilant eye on the sale-proceeds and on the salesmen who were working under his supervision, but he played a negative roll and as a result of his negligence, the embezzlement took place. He is retired from Civil Hospital, Ambala Cantt and approached the respondent for employment in the year 1969 and appointment was given to him on stop gap basis. The claimant attained the age of 70 years and was unfit for the service. The retirement age limit in common cadre is 58 years. He further argued that the claimant does not fall under the category of the workman under section 2 (s) of the Industrial Disputes Act, 1947 and he was overall incharge of the store. He further argued that Shri R.S. Pal MW-1 has cleared the position of the respondent in the Court that the claimant was appointed on 22nd September, 1969 as Incharge, Medical Section and on the physical verification of the stores of the Medical Section, it came to the light that the store was short by Rs. 70,644 which was detected by the audit department. The matter was reported to the police and the claimant was arrested Shri D.D. Yadav, Judicial Magistrate, Ambala discharged him under section 409, IPC but the said case is still going on against Shri Vishav Bandhu the co-accused who was directly under the claimant. He was released by the Magistrate by his order, dated 7th February, 1978. He was simply discharged in the said order.

The representative of the workman argued that the workman was employed by the respondent in the year 1969 as admitted by the respondent witness as MW-1 and continued his service smoothly without any break or complaint upto the year 1976 and was placed under suspension, —vide order dated 25th October, 1976 which is Ex. W-1 because the claimant was arrested in a case under section 409, IPC and so he was arrested from the date in which it is clearly given that he will draw 50% consolidated subsistence allowance of his salary. After this arrest, the workman was discharged from the Court of Shri D.D. Yadav, Judicial Magistrate, First Class, Ambala. After receiving this order the workman approached the General Manager through the letter Ex. W-3 with a request

to reinstate the workman but there was no reply. Again the workman sent a letter Ex. M-5 with a copy of the order of the Judicial Magistrate. Even then he received no reply from the General Manager. Then he sent another request for reinstatement, —vide Ex. W-2, dated 25th October, 1978 but no reply was received from the General Manager. After this he received the letter from the General Manager Ambala, Central Co-op. Consumers, dated 28th October, 1979 which is Ex. M-6 in which the General Manager has informed the workman that his order is hereby rescinded and he is treated to have been terminated from the service from the day he was arrested on 29th September, 1976 by F.I.R. No. 409, Police Station, Ambala Cantt. Thus he is not entitled to any suspension wages besides he is already served with a notice of demand u/s 2(1) of the Industrial Disputes Act, 1947. After this order the workman had no alternative except to raise demand notice which come to this court under the reference. He further argued that there is no law on the earth to make retrospective order for termination as the General Manager has done in this case. The General Manager issued these orders of termination on 28th April, 1979 but has made it effected from 29th September, 1976 which is against the principles of natural justice and cannot be said to be good in the eye of law in any way. When the workman made so many requests to the General Manager, —vide his letters Ex. W-2, W-3 and W-5, the General Manager gave no reply to those letters. These letters are dated 10th February, 1978, W-3, 29th March, 1978, W-5 and 25th October, 1978, W-2. When the respondent gave no reply to these letters and gave the final order of termination is quite illegal. After receiving these letters the right course for the respondent was to constitute a domestic enquiry against the workman to hold him guilty of the charges against him of the misappropriation. When the Court has discharged the workman with the remarks that there is no prima facie case against the workman. It is quite clear that there was no mistake or guilt of the workman in the eye of law but the respondent could not give the termination to the workman without holding the enquiry and holding him guilty of the charges. The retrospective orders are baseless and not effective in the eye of law. He further argued that the respondent has produced no documentary evidence in the case except one oral witness Shri Raghbir Singh, Asstt. Establishment, Ambala Coop. Consumer Store, who could not prove his case according to written statement given by the respondent. The raised so many objections in the written statement but did not care to prove, even a single objection before this Court. So the order of termination are not justified and proper and the workman is entitled for his relief as claimed.

After hearing the arguments of both the parties and carefully going through the file, I am of the view that the respondent has miserably failed to prove his case. The respondent knew the fact fully well that the person employing is a retired man and after retirement they are employing him. He was employed in the year 1969 and continued upto 1976 without any brack or complaint. As alleged by the respondent that he was employed as stop gap arrangement cannot be proved after such a long service. The respondent could terminate the service of the workman at the first instance on the same plea of age as he was made in the year 1979. There was no bar or any hitch with the management to make such orders, when he makes the order of suspension. The order of termination in the year 1979 are quite illegal with the retrospective effect from the year 1976 when he was suspended. When the workman sent so many letter to the respondent which were not denied by the respondent in his evidence and gave no reply shows the inefficiency of the respondent. They could have taken late step earlier at the written request made by the workman for the reinstatement which was not cared by the respondent. So it is false of the respondent and not of the workman and the order of termination are quite illegal and without jurisdiction. The respondent stressed very much on the age of retirement in the written statement but produced nothing to prove this fact that the claimant is about 70 years. The burden of proving this fact was on the respondent but the respondent gave no evidence in this respect and could not prove that the workman is about 70 years old. So in these circumstances this issue is also decided in favour of the workman and against the management. The workman is entitled for his reinstatement with full back wages and continuity of service. This be read in answer to this reference.

Dated the 5th February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.

Endorsement No. 456, dated 19th February, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,

Labour Court, Haryana,  
Faridabad.